**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees	WT Docket No. 97-82

COMMENTS OF ADVANCED TELECOMMUNICATIONS TECHNOLOGY, INC.

Advanced Telecommunications Technology, Inc. ("Advanced"), by its attorneys, hereby submits its comments in response to the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding. As a small, minority-owned business that plans to participate in the upcoming C- and F-Block PCS reauction, Advanced has a direct interest in the outcome of this proceeding.

I. The Commission Should Not Adopt Tiered Basic Trading Areas, Nor Should it Eliminate Eligibility Restrictions For Certain Tiers.

Advanced strongly opposes the adoption of tiered Basic Trading Area ("BTA") licensing and corresponding removal of eligibility restrictions for certain tiers. Such actions are contrary to the specific Congressional directive in the Communications Act of 1934, as amended (the "Act") that the FCC should promote a wide dissemination of licenses, and that licenses should be granted to small, minority- and women-owned businesses. Moreover, removing eligibility criteria would further disadvantage any small business that participated in the upcoming auction.

The 1993 Budget Act[1] that granted the FCC authority to auction licenses stated that the FCC must "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services." 47 U.S.C. §309(j)(4)(D). Among other objectives, the 1993 Budget Act said the Commission "shall seek to promote . . . the following objectives: . . . economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." 47 U.S.C. §309(j)(3)(B). Elimination of eligibility restrictions for certain licenses in the C- and F-Block reauction would allow the country's largest wireless licensees (e.g., Sprint, Nextel, SBC) to acquire additional wireless spectrum, in direct contradiction of the statutory mandate to widely disseminate licenses. Removing eligibility restrictions is also likely to drive prices significantly higher, shutting out many small businesses.

The Commission has already greatly reduced its assistance to small businesses, despite its statutory mandate. When the Supreme Court decided Adarand Constructors v. Pena,[2] the Commission removed any additional consideration given to minority- or women-owned businesses that are not also small businesses. The Commission was not required to eliminate the minority- and women-owned business preference provisions from its rules. It did so to avoid litigation over meeting the "strict scrutiny" test adopted in Adarand.[3] Later, the Commission suspended its installment payment plan for small business licensees. Congress eliminated the ability to issue tax

[1] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, §6002(b), 107 Stat. 312 (1993)("Budget Act").

[2] 115 S. Ct. 2097 (1995).

[3] Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Sixth Report and Order*, 11 FCC Rcd 136, 143 (¶ 11)(1995)("Upon careful review we remain concerned that our present record would not adequately support the race- and gender-based provisions in our C block competitive bidding rules under a strict scrutiny standard of review . . . as a result, we strongly believe that there is a substantial likelihood of further legal challenge to the C block auction in the wake of Adarand if such [race- and gender-based] provisions remain unchanged.")

certificates upon sale of minority businesses.[4] While the Commission had good reason to eliminate these options, the net effect was to reduce opportunities for small businesses to participate and succeed in spectrum auctions. The Commission should not now needlessly eliminate what little assistance is left to small businesses.

Advanced also opposes "open" bidding on any licenses because it disagrees with the Commission's conclusion that a small business only needs a single 10 MHz license to succeed. Depending on their business plan, licensees with a single 10 MHz license may have difficulty competing with cellular and A and B-Block PCS carriers with much more spectrum, particularly in markets that have a number of entrenched interconnected wireless service providers.

The first problem would be lack of ability to expand. The Commission is already receiving complaints of congestion from carriers with licenses for 30, 40, and 45 MHz of spectrum in a market. Small businesses will encounter the same problems as they add customers, only more quickly because they will have a small amount of spectrum. Given the fact that the wireless data market is projected to grow faster than the wireless voice market,[5] the problem may be more significant for 10 MHz licensees, who will require a large amount of spectrum in order to provide internet capability and other data services.

The second problem is unfair competition. The FCC has acknowledged that small businesses often lack access to capital.[6] Moreover, a new small business licensee has the additional obstacle of being, in most cases, the last entrant into the mobile wireless market. It would then compete against nationwide service providers with economies of scale and scope, aggressive

[4] Congress repealed the authority to issue tax certificates, formerly 26 U.S.C. § 1071, in P.L. 104-7, Section 2(a), enacted April 11, 1995.
[5] "It has been projected that by 2003, more people will access the Internet via a mobile device than a PC, and that 10% to 15% of the mobile phones sold in the year 2000 will be Internet-capable." "The Bottom Line on WAP," Wireless Review, Feb. 15, 2000.
[6] Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fifth Report and Order*, , 9 FCC Rcd 5532, 5572 (¶96) (1994) ("These special provisions are tailored to address the major problem facing minorities and women desiring to offer PCS – access to capital").

competitive pricing, and national advertising and marketing forces. To allow existing cellular, PCS, or SMR service providers to purchase two or three (two 10 MHz C-Block and one F-Block) PCS licenses in this auction would only exacerbate the dramatic disparity between spectrum allocated to small businesses and that held by other licensees. Such a disparity would decrease the attractiveness of a new licensee's business, thereby increasing the difficulty of accessing capital.

The Commission justifies tiers, in part, to alleviate spectrum shortages for major incumbent licensees. However, carriers are currently addressing spectrum needs through mergers and acquisitions. In the next two years, there will be an unrestricted secondary market for most C- and F-block license, because the eligibility restrictions for existing C- and F-block licensees expire five years after initial license grant. Carriers also have the option of participating in the Commission's numerous auctions for other spectrum, some of which include large spectrum blocks, such as LMDS.[7] In short, sacrificing the small business PCS spectrum set-aside to assist existing large wireless companies ins unnecessary. In contrast, maintenance of eligibility restrictions may lead to significant investment in designated entities by large wireless companies, such as Western Wireless' joint venture with Cook Inlet. Absent these incentives, the largest wireless carriers will simply purchase additional spectrum outright, further jeopardizing another potential source of capital available to small businesses.

II. <u>The Commission should reconfigure C-Block PCS Spectrum for small businesses</u>.

Advanced has no objection to dividing C-Block licenses into three 10 MHz licenses. Division of the licenses into 10 or 20 MHz blocks may promote "wide dissemination of licenses", as required by Section 309(j) of the Act . Such action will also allow bidders flexibility to aggregate adequate spectrum for their particular business plan within a market. Division into multiple licenses will also make licenses more affordable. However, as set forth above, Advanced only supports

[7] LMDS licenses were auctioned in 150 MHz and 1150 MHz blocks.

multiple C-Block licenses if the Commission maintains the current eligibility restrictions for all C- and F-Block licenses.

III. The Commission should increase the bidding credit for small businesses.

Advanced supports revising the bidding credit as proposed. Since small businesses no longer have the ability to opt for installment payments, increased bidding credits are the only way small businesses can attract capital. When the Commission originally adopted rules to implement "designated entity" provisions, it adopted five provisions to assist small businesses: established two "entrepreneur's" frequency blocks (C- and F-block), granted bidding credits, permitted installment payments; adopted a tax certificate program, and allowed a reduced upfront payment.[8] The Commission has eliminated installment payments and tax certificates. It has proposed to remove eligibility restrictions for up to two-thirds of the C-Block spectrum. The only remaining long-term benefit is bidding credits. The Commission should increase the bidding credit in light of removal of most other provisions to benefit designated entities.

IV. The Commission should remove restrictions on the sale of designated entity licenses.

Advanced supports the Commission's conclusion that sale or transfer of constructed systems to non-entrepreneurs is in the public interest. Such an action would allow all carriers to acquire or sell spectrum as needed in the secondary market, while preserving the public interest.

Since Advanced opposes auction participation by any licensees that do not meet the small business eligibility criteria, it also opposes removing transfer restrictions on licenses granted to non-eligible entities. If adopted, such a rule would again penalize entrepreneurial entities. First, it would create a larger free market for spectrum bought and sold by the country's largest wireless providers, while restricting small business' opportunity to do the same. Additional unrestricted spectrum could also lead to the de-valuing of entrepreneurs' block licenses. Advanced also believes such a rule may artificially increase auction prices by creating incentives for large companies to purchase spectrum at the auction and warehouse it until it can be sold at a profit.

V. <u>The Commission should retain the CMRS Spectrum Cap</u>.

Advanced strongly supports the Commission's conclusion that it must maintain the current CMRS spectrum caps. The spectrum cap was adopted to avoid excessive concentration of licenses. Elimination of the cap at this point would undermine the goals of Section 309(j) regarding disseminating licenses to a variety of applicants and enhancing competition. In addition, the spectrum cap works to prevent monopolistic behavior by incumbents. Lifting the cap to allow existing licensees to amass more spectrum within a market would give incumbents even more of an advantage than they currently enjoy. Additional spectrum could further empower entrenched incumbents to act in anti-competitive ways.

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[8] See *Fifth Report and Order*, supra n.5, at ¶ 113. A sixth provision, permitting geographic partitioning, applied to rural telephone companies only.

VI. Conclusion

For the reasons set forth above, Advanced encourages the Commission to retain C- and F-Block eligibility restrictions, increase the bidding credit for small businesses, remove restrictions on the sale of "designated entity licenses," and maintain the spectrum cap.

Respectfully submitted,

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